

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JACK K. STEIN,

Petitioner,

v.

SCOTT FRAKES, Supt.,

Respondent.

Case No. C09-5006RBL

ORDER

THIS MATTER comes on before the above-entitled Court upon Petitioner's Notice of Appeal [Dkt. #127] and Amended Notice of Appeal [Dkt. #130]. Having considered the entirety of the records and file herein, the Court finds and rules as follows:

On October 2, 2009 the Court entered an Order and Judgment dismissing Petitioner's habeas corpus action. [Dkt. #'s 114, 115]. On October 8, 2009 Petitioner filed a Motion for Reconsideration of the Court's dismissal of his petition and on October 22, 2009 filed a Notice of Appeal which he amended on October 23, 2009. [Dkt. #'s 118, 127, 130]. On October 26, 2009 the Court granted Petitioner's Motion for Reconsideration and re-referred the matter to Magistrate Judge J. Richard Creatura [Dkt. #122].

Although the Court granted Petitioner's Motion for Reconsideration and vacated the Judgment, the Notice of Appeal obligates this Court to decide whether a Certificate of Appealability should issue. Because Petitioner filed a Notice of Appeal the Clerk must process it and cannot do so until the Court

1 rules on the issuance of a Certificate of Appealability.

2 The Judgment has been vacated and the petition reopened; therefore, Petitioner does not yet have  
3 an appealable order which requires a Certificate of Appealability. For this reason, the Court declines to  
4 issue a Certificate of Appealability because Petitioner has failed to make “a substantial showing of the  
5 denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

6 **IT IS SO ORDERED.**

7 The Clerk shall send uncertified copies of this order to all counsel of record, and to any party  
8 appearing pro se.

9 Dated this 9<sup>th</sup> day of December, 2009.

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12 RONALD B. LEIGHTON  
UNITED STATES DISTRICT JUDGE